

Remarks

Claims 1-101 are pending. In a restriction requirement, mailed January 30, 2006, the Examiner required restriction under 35 U.S.C. §§ 121 between:

Group I - The compounds and compositions according to claim 1 of formula I, wherein X is N;

Group II - The compounds and compositions according to claim 1 of formula I, wherein X is C;

Group III - The method of treating wherein X is N; and

Group IV - The method of treating wherein X is C.

The inventions of Group I and II and Groups III and IV were alleged to be related as product and process of use, and distinct because the process as claimed can be practiced with another materially different product. The inventions of Group I through IV were also alleged to be separate and patentably distinct because there is no patentable co-action among them. Applicants respectfully disagree and traverse the restriction requirement.

THE RESTRICTION REQUIREMENT IS IMPROPER

MPEP §803 mandates two criteria for a proper restriction requirement:

(A) The inventions must be independent (see MPEP §802.01, §806.04, §808.01) or distinct as claimed (see MPEP §806.05 - §806.05(i)); **and**

(B) **There must be a serious burden on the examiner** if restriction is required (see MPEP §803.02, §806.04(a)-§806.04(i), §808.01(a), and §808.02). (Emphasis added.)

No such serious burden has been alleged in the Office Action, and it is Applicants' position that no such serious burden exists. All of the claims are limited to compounds of Formula I or a form thereof (i.e., a pharmaceutically acceptable salt, hydrate, solvate, crystal form, diastereomer, prodrug, or mixture thereof), compositions comprising such compounds or forms, or methods of their use. In other words, the methods of the invention can be practiced with no product other than a compound of Formula I or form thereof, or a composition comprising such compound of Formula I or form thereof. In that regard, notwithstanding the classifications into which these compounds, compositions, and methods fall, the search for

provisionally elected Group II would appear of necessity also to cover the art relevant to Group IV as a source for novelty- or obviousness-defeating prior compositions of matter. Likewise, the search for the compounds of Group I would also cover the art relevant to Group III.

Moreover, the compounds of Group I and those of Group II differ only in one atom. Both groups have an amino substituted imidazo[1,2-a]pyrazine core. Applicants respectfully submit that it would not be a serious burden to combine Groups I and II.

The restriction requirement should, therefore, be withdrawn.

PROVISIONAL ELECTION

Applicants provisionally elect the subject matter of Group II, the compounds and compositions according to claim 1 of formula I, wherein X is C. The right to pursue non-elected subject matter in one or more divisional applications is expressly reserved.


CONCLUSION

Applicants maintain that restriction is improper in the present application because examination of the compounds and the claimed method of their use would not appear to impose an undue or serious burden on Office resources. Reconsideration of the restriction requirement is earnestly solicited.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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